Filed in District Court

State of Minnesota

January 15, 2019

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Brian Azure,

Plaintiffs,

ORDER AND MEMORANDUM GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

vs.

Jennie Bucholz,

Court File No. 56-CV-18-2338

Defendants.

On January 4, 2019, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota on Plaintiff's Motions Summary Judgment and Defendant's Motion for Leave to Amend Answer. Attorney Jon Brakke appeared on behalf of Plaintiff. Defendant appeared without counsel.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion for Summary Judgment is **GRANTED**.
2. Defendant shall pay Plaintiff $13,800.
3. Defendant has 60 days from receipt of this order to sell the vehicles to satisfy the judgment.
4. No costs, interests, or other fees shall be awarded to either party.
5. Defendant's Motion for Leave to Amend Answer is **DENIED.**
6. The attached Memorandum is incorporated herein.

Dated: January 15, 2019

BY THE COURT:

Kevin M. Miller
Judge of District Court

MEMORANDUM

Facts

Plaintiff alleges that on September 15, 2017, Defendant contracted to purchase two vehicles from him. One vehicle was a 2006 BMW 325 for $6,800 and the other was a 2005 BMW 525 for $7,000. Conversely, Defendant alleges that Plaintiff gifted her those cars during their relationship in 2016.

Defendant never made any payments to Plaintiff.

Defendant filed for bankruptcy on June 15, 2017 and in Schedule A/B, she was required to list all motor vehicles in which she had an interest. She did not list either of the aforementioned cars.

The cars are titled in Defendant's name.

Legal Analysis

I. Plaintiff's Motion for Summary Judgment is GRANTED.

a. Summary Judgment Standard

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.03; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson*, 477 U.S.

at 248. Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.05. "When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004).

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." DLH, 566 N.W.2d at 70-71. Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

b. Plaintiff is entitled to summary judgment based on the doctrine of judicial estoppel.

Defendant failed to list the two vehicles that she claims were gifted to her in September 2016 in her bankruptcy filings. Judicial estoppel precludes her from claiming an ownership interest in those vehicles in this matter. *See generally Longaker v. Boston Sci. Corp*, 715 F.3d 658 (8th Cir. 2013); *Van Horn v. Martini*, 812 F.3d 1180 (8th Cir. 2016).

Courts have looked to three factors to determine whether judicial estoppel should apply: (1) whether a party's later position is "clearly inconsistent" with its previous position; (2) whether the party succeeded in persuading the first court to accept its position; and (3) "whether the party seeking to assert an inconsistent position would derive an unfair advantage…if not estopped." *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1047 (8th Cir. 2006).

Defendant's bankruptcy schedule from June of 2017 fails to disclose ownership of either vehicle that is subject to this action. The Defendant's current claim that she was in possession of the vehicles in 2016 is clearly inconsistent wither her previous bankruptcy petition. Further the Bankruptcy Court accepted the Defendant's petition. Finally, this Court finds that the Defendant would derive an unfair advantage if not estopped from asserting the inconsistent position she now presents, as she would be allowed to argue two different positions, under oath, in two separate legal proceedings. The Court will disregard Defendant's affidavit, claiming that she has an ownership interest in the cars – since she did not claim she owned the vehicle at the time of the bankruptcy proceeding. Because the Court must disregard the claim that contradicts a previous claim under oath, Defendant has not shown the existence of a material fact in dispute.

Because the cars are titled in Defendant's name, she shall sell both vehicles and compensate Plaintiff in the amount of $13,800.

Summary judgment on behalf of Plaintiff is **GRANTED.**

II. Defendant's Motion for Leave to Amend Answer is DENIED.

There are no remaining facts in dispute and Judgment shall be entered against Defendant, and Defendant's Motion for Leave to Amend Answer is hereby denied.

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